

Minerals Management Service, Interior

§ 243.8

of July 1, 1998, under 30 CFR part 290 subpart B, or under 30 CFR part 208.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture.

§ 243.4 How do I suspend compliance with an order?

(a) If you timely appeal an order, and if that order or portion of that order:

(1) Requires you to make a payment, and you want to suspend compliance with that order, you must post a bond or other surety instrument or demonstrate financial solvency under this part, except as provided in paragraph (b) of this section; or

(2) Does not require you to make a payment, compliance with that order is suspended when you meet all requirements to file that appeal.

(b) You need not meet the requirements of paragraph (a) of this section if:

(1) The order is an assessment; or
(2) Another person agrees to fulfill these requirements on your behalf under § 243.5.

§ 243.5 May another person post a bond or other surety instrument or demonstrate financial solvency on my behalf?

Any other person, including a designee, payor, or affiliate, may post a bond or other surety instrument or demonstrate financial solvency under this part on behalf of an appellant required to post a bond or other surety instrument under § 243.4(a)(1).

§ 243.6 When must I or another person meet the bonding or financial solvency requirements under this part?

If you must meet the bonding or financial solvency requirements under § 243.4(a)(1), or if another person is meeting your bonding or financial solvency requirements, then either you or the other person must post a bond or other surety instrument or demonstrate financial solvency within 60 days after you receive the order or the Notice of Order.

§ 243.7 What must a person do when posting a bond or other surety instrument or demonstrating financial solvency on behalf of an appellant?

If you assume an appellant's responsibility to post a bond or other surety instrument or demonstrate financial solvency under § 243.5, you:

(a) Must notify MMS in writing at the address specified in § 243.200(a) that you are assuming the appellant's responsibility under this part;

(b) May not assert that you are not otherwise liable for royalties or other payments under 30 U.S.C. 1712(a), or any other theory, as a defense if MMS calls your bond or requires you to pay based on your demonstration of financial solvency; and

(c) May end your voluntarily-assumed responsibility for posting a bond or other surety instrument only after the appellant under this part either:

(1) Pays or posts a bond or other surety instrument; or
(2) Demonstrates financial solvency.

§ 243.8 When will MMS suspend my obligation to comply with an order?

(a) *Federal leases.* Subject to paragraph (d) of this section, if you appeal an order regarding the payment and reporting of royalties and other payments due from Federal mineral leases onshore or on the Outer Continental Shelf (OCS), and:

(1) If the amount under appeal is less than \$10,000 or does not require payment of a specified amount, MMS will suspend your obligation to comply with the order. MMS will use the lease surety posted with the Bureau of Land Management for onshore leases, and MMS for OCS leases, as collateral for the obligation; or

(2) If the amount under appeal is \$10,000 or more, MMS will suspend your obligation to comply with that order if you:

(i) Submit an MMS-specified surety instrument under subpart B of this part within a time period MMS prescribes; or

(ii) Demonstrate financial solvency under subpart C.

(b) *Indian leases.* Subject to paragraph (d) of this section, if you appeal an

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order regarding the payment and reporting of royalties and other payments due from Indian mineral leases subject to this part, and:

(1) If the amount under appeal is less than \$1,000 or does not require payment, MMS will suspend your obligation to comply with the order. MMS will use the lease surety posted with the Bureau of Indian Affairs as collateral for the obligation; or

(2) If the amount under appeal is \$1,000 or more, MMS will suspend your obligation to comply with that order if you submit an MMS-specified surety instrument under subpart B of this part within a time period MMS prescribes.

(c) Nothing in this part prohibits you from paying any demanded amount or complying with any other requirement pending appeal. However, voluntarily paying any demanded amount or otherwise complying with any other requirement when suspension of an order is otherwise available under these rules does not create judicially reviewable final agency action under 5 U.S.C. 704.

(d) Regardless of the amount under appeal, MMS may inform you that it will not suspend your obligation to comply with the order under paragraph (a) or (b) of this section because suspension would harm the interests of the United States or the Indian lessor.

§ 243.9 Will MMS continue to suspend my obligation to comply with an order if I seek judicial review in a Federal court?

(a) If you seek judicial review of an IBLA decision or other final action of the Department of the Interior regarding an order, MMS will suspend your obligation to comply with that order pending judicial review if you continue to meet the requirements of this part.

(b) Notwithstanding the provisions of paragraph (a) of this section, MMS may decide that it will not suspend your obligation to comply with an order. MMS will notify you in writing of that decision and the reasons for it.

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§ 243.10 When will MMS collect against a bond or other surety instrument or a person demonstrating financial solvency?

(a) This section applies to you if, for an appeal of an order under this part, you:

(1) Maintain a bond or an MMS-specified surety instrument on your own behalf or for another person; or

(2) Have demonstrated financial solvency on your own behalf or for another person.

(b) MMS may initiate collection against the bond or other surety instrument or the person demonstrating financial solvency:

(1) If the MMS Director or the Deputy Commissioner of Indian Affairs decides your appeal adversely to you and you do not pay the amount due or appeal that decision to the IBLA under 43 CFR part 4, subpart E;

(2) If the IBLA, the Director of the Office of Hearings and Appeals, an Assistant Secretary, or the Secretary decides your appeal adversely to you, and you do not pay the amount due or pursue judicial review within 90 days of the decision;

(3) If a court of competent jurisdiction issues a final non-appealable decision adverse to you, and you do not pay the amount due within 30 days of the decision;

(4) If you do not increase the amount of your bond or other surety instrument as required under § 243.101(b), or otherwise fail to maintain an adequate surety instrument in effect, and you do not pay the amount due under the order within 30 days of notice from MMS under § 243.101(b);

(5) If the obligation to comply with an order or decision is not suspended under § 243.8 or § 243.9 and you do not pay the amount required under the order or decision; or

(6) If the MMS bond-approving officer determines that you are no longer financially solvent under § 243.202(c), and you do not pay the order amount or post a bond or other MMS-specified surety instrument under subpart B within 30 days of that determination.